IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gheeshi Lal. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 740/2005 against the order dated 23-4-2005 passed by the Addl Sessions Judge cum Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bhilwara, in Cr. Revision No.79/2004.

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Date of Order: November 14, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.K. Rastogi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Anuj Sahlot, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the impugned order taking cognizance dated 12-4-2004 passed by the Judicial Magistrate, Bijoliya, district Bhilwara (for short, "the trial Court" hereinafter) in Criminal Case No. 42/2004 was challenged by the petitioner before the Additional Sessions Judge cum Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Bhilwara (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by the petitioner challenging the order of the trial Court taking

cognizance was maintained. Hence this criminal miscellaneous petition.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

The non-petitioner No.2 filed a complaint before the trial Court against petitioner Gheesi Lal, Suraj Mal and one Ghasi Lal S/o Nathu Lal for the offences under Section 420 read with Section 120-B, IPC. The trial Court recorded the statements of the complainant/non-petitioner No.2 under Section 200 and witnesses Mohan Lal and Shambhu Lal under Section 202 of the Code and took cognizance of the offence under Section 420 IPC and issued process against the petitioner.

It is contended by the learned counsel for the petitioner that the occurrence is alleged to have been committed in the year 1970 and the complaint was filed by the complainant on 19-1-2004 and, therefore, the private complaint, after lapse of such a long period of the incident, is not maintainable. Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Suresh Vs. Mahadevappa Shivappa Danannava & Anr., 2005 R.Cr.D. 648 (SC); and a decision of this Court in Anand Kumar Vs. State of Rajasthan, 2005 WLC (Raj) 708.

Learned counsel for the non-petitioner No.2 has

supported the orders impugned.

It appears that the non-petitioner No.2 earlier filed a complaint on 2-1-2004 on the same facts on which the present complaint has been filed and that complaint was dismissed on 3.1.2004. The second complaint was filed on 19-1-2004, on which the trial Court took cognizance relating to the same occurrence at the same time and place. Even otherwise, the allegation in the complaint is that on 17-12-1975, he got a plot No. 131 allotted in Indira Colony, Bijoliya, which was given by the State government in their Welfare Scheme on the eve of Gandhi Centuary to the members of Harijan community. Thus, even if any offence of cheating is made out then the occurrence is of 17-12-1975 and the first complaint was filed on 2-1-2004 which was dismissed on 3-1-2004 and thereafter again the second complaint was filed on 19-1-2004 i.e. almost about 29 years from the date of the occurrence. Even on careful perusal of the complaint and the statements of witnesses, it cannot be said that the complainant/non-petitioner No.2 has been cheated. There is no element of cheating so far as the complainant/non-petitioner No. 2 is concerned.

The Hon'ble Supreme Court, in Suresh Vs. Mahadevappa Shivappa Danannava & Anr. (supra) held as under:-

"As already noticed, the complaint was filed on

> 17.5.1999 after a lapse of 11 ½ years and, therefore, the very private complaint filed by the respondent No.1 is not at all maintainable at this distance of time. It is the specific case of accused No.1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Sec. 415 of CrPC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring the accused No.1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself."

Keeping in view the decision of the Hon'ble Supreme Court in Suresh Vs. Mahadevappa Shivappa Danannava & Anr. (supra), in my view, the complaint as such deserves to be quashed.

The criminal miscellaneous petition is, therefore, allowed. The impugned orders dated 12-4-2004 and 23-4-2005 passed by the trial Court and the Revisional Court respectively, are set aside and the criminal proceeding against the petitioner in Criminal Case No. 42/2004 pending in the Court of the Judicial Magistrate, Bijoliya, district Bhilwara, stands quashed.

(H.R. PANWAR), J.

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